



DEPARTMENT OF JUSTICE

28 CFR Part 0

[Directive No. 2021-001]

Designation of Authority

AGENCY: Office of the Assistant Attorney General, Criminal Division, Department of Justice.

ACTION: Final rule.

SUMMARY: The Attorney General has authorized the Assistant Attorney General for the Criminal Division to perform the functions of the “Designated Authority” under executive agreements between the United States and other countries on access to data by foreign governments and to delegate that authority to certain officials in the Office of International Affairs (“OIA”). Consistent with that authorization, the Assistant Attorney General for the Criminal Division delegates authority to perform the functions of the Designated Authority pursuant to such agreements to the Deputy Assistant Attorneys General, Criminal Division, and the Director, Deputy Directors and the Associate Director supervising the implementation of such agreements in OIA.

DATES: Effective [INSERT DATE OF PUBLICATION IN FEDERAL REGISTER]

FOR FURTHER INFORMATION CONTACT: Vaughn Ary, Director, Office of International Affairs, Criminal Division, U.S. Department of Justice, Washington, DC 20005; Telephone (202) 514-0000.

SUPPLEMENTARY INFORMATION: Congress authorized the United States to enter into executive agreements with foreign governments under which the parties afford each other reciprocal rights of access to data covered by such agreements in response to qualifying, lawful

orders. *See* Clarifying Lawful Overseas Use of Data Act, Public Law 115-141, Div. V, Section 105(a) (March 23, 2018), 18 U.S.C. 2523 (“CLOUD Act”). The first such executive agreement was concluded between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland. *See* Agreement between the Government of the United States of America and the Government of the United Kingdom of Great Britain and Northern Ireland on Access to Electronic Data for the Purpose of Countering Serious Crime (October 3, 2019), available at <https://www.justice.gov/dag/cloudact> (the “U.S. – U.K. Agreement”). The U.S. – U.K. Agreement provides that a “Designated Authority” for each country shall perform certain, specified functions necessary to implement the agreement. As applied to the United States, “Designated Authority” is defined under the agreement as “the governmental entity designated . . . by the Attorney General.” *Id.* at Article 1.8. To address the requirements of this executive agreement, the Attorney General has designated the Criminal Division as the “Designated Authority” in a Federal Register notice published on October 23, 2020. The Attorney General has authorized the Assistant Attorney General in charge of the Criminal Division to perform the functions of the Designated Authority and also to delegate this authority. 28 CFR 0.64-6. This final rule delegates that authority to officials in the Criminal Division and OIA.

To address future agreements of this nature, this final rule applies to any executive agreement under 18 U.S.C. 2523 that either designates the Attorney General or the Department of Justice as the Designated Authority or authorizes the Attorney General to designate a Designated Authority (or like designation), and for which the Attorney General has designated the Criminal Division as such authority.

Administrative Procedure Act--5 U.S.C. 553

This rule is a rule of agency organization and relates to a matter relating to agency management and is therefore exempt from the requirements of prior notice and comment and a 30-day delay in the effective date. *See* 5 U.S.C. 553(a)(2), 553(b)(3)(A), 553(d).

Regulatory Flexibility Act

Further, a Regulatory Flexibility Analysis is not required to be prepared for this final rule because the Department was not required to publish a general notice of proposed rulemaking for this matter. 5 U.S.C. 604(a).

Executive Orders 12866 and 13563--Regulatory Review

This action has been drafted and reviewed in accordance with section 1(b) of Executive Order 12866, "Regulatory Planning and Review," and section 1(b) of Executive Order 13563, "Improving Regulation and Regulatory Review." This rule is limited to agency organization, management, and personnel as described in section 3(d)(3) of Executive Order 12866 and, therefore, is not a "regulation" or "rule" as defined by the order. Accordingly, this action has not been reviewed by the Office of Management and Budget.

Executive Order 13132--Federalism

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988--Civil Justice Reform

This rule was drafted in accordance with the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988.

Unfunded Mandates Reform Act of 1955

This rule will not result in the expenditure by State, local and tribal governments, in the

aggregate, or by the private sector of \$100,000,000 or more in any one year (adjusted annually for inflation), and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Congressional Review Act

This action pertains to agency management, personnel, and organization and does not substantially affect the rights or obligations of non-agency parties and, accordingly, is not a “rule” as that term is used by the Congressional Review Act, 5 U.S.C. 804(3)(B), (C).

Therefore, the reporting requirement of 5 U.S.C. 801 does not apply.

List of Subjects in 28 CFR Part 0

International Agreements, Treaties.

For the reasons stated in the preamble, part 0 of title 28 of the Code of Federal Regulations is amended as follows:

PART 0 --ORGANIZATION OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 continues to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515-519.

2. Add Directive No. 2021-001 at the end of Appendix to Subpart K to read as follows:

Appendix to Subpart K of Part 0

Criminal Division

Directive No. 2021-001

Designated Authority under executive agreements on access to data by foreign governments.

By virtue of the authority vested in me by § 0.64-6 of Title 28 of the Code of Federal Regulations, I hereby delegate the authority to perform the functions of the Designated Authority under executive agreements between the United States of America and other countries regarding

access to data by foreign governments, negotiated pursuant to the authority in 18 U.S.C. 2523, to the Deputy Assistant Attorneys General, Criminal Division, and the Director, the Deputy Directors and the Associate Director supervising implementation of such agreements in the Office of International Affairs. This delegation applies to executive agreements that either designate the Attorney General or the Department of Justice as the Designated Authority (or like designation) or authorize the Attorney General to designate a Designated Authority (or like designation), and for which the Attorney General has designated the Criminal Division as such authority.

Dated: October 7, 2021

Kenneth A. Polite, Jr.
Assistant Attorney General

[FR Doc. 2021-25455 Filed: 11/22/2021 8:45 am; Publication Date: 11/23/2021]